

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

DARLENE GUM,

Plaintiff,

v.

Civil Action No. 2:19-cv-00065

Judge

SAM'S WEST, INC., D/B/A SAM'S CLUB,
SAM'S WEST, INC., D/B/A SAM'S CLUB,
SAM'S EAST, INC., D/B/A SAM'S CLUB,
SAM'S EAST, INC., D/B/A SAM'S CLUB,
SAM'S CLUB,
WALMART, INC.,
WALMART, INC., and JOHN DOE 1,

Defendants.

NOTICE OF REMOVAL

TO: Carole Jones, Circuit Clerk
Wood County Judicial Building
2 Government Square, Room 131
Parkersburg, WV 26101-5353

Mathew C. Carlisle, Esq.
Theisen Brock, LPA
424 Marietta, OH 45750
Counsel for Plaintiff

Sanford A. Meizlish, Esq.
Jason C. Cox, Esq.
Barkan Meizlish DeRose Wentz McInerney Peifer, LLP
250 E. Broad St., 10th Floor
Columbus, OH 43215
Of Counsel for Plaintiff

In accordance with 28 U.S.C. §§ 1332, 1441, and 1446, you are hereby notified that the Defendants, Sam's West, Inc., Sam's East, Inc. and Sam's Club, (hereinafter referred to as "Sam's Defendants") and Walmart, Inc., have removed the above-captioned case from the Circuit Court of Wood County, West Virginia, to the United States District Court for the

Southern District of West Virginia, Charleston Division. In support of its Notice of Removal, the Defendants state as follows:

BACKGROUND

1. On or about December 27, 2018, the Plaintiff Darlene Gum filed a Complaint in the Circuit Court of Wood County, West Virginia, Civil Action No. 18-C-343.

2. The Defendants, Sam's West, Inc., Sam's East, Inc., Sam's Club and Walmart, Inc., all of which are corporations, were served with the Complaint via certified mail on or about December 31, 2018.

3. The Complaint alleges that the Plaintiff Darlene Gum was struck in the "right leg and knee" by a flat bed shopping cart operated by Defendant John Doe, resulting in personal injuries to the Plaintiff. (Compl. ¶11). As a result of the alleged incident, the Plaintiff Darlene Gum alleges that she sustained serious and permanent injuries to her "right leg and knee requiring surgical intervention" and incurred expenses in excess of \$81,000.00. (Compl. ¶¶13-14). The Plaintiff Darlene Gum seeks the recovery of medical expenses; past and future damages for impaired use of physical faculties, pain and mental anguish, embarrassment, humiliation and fright; past and future lost wages; compensatory damages in excess of \$75,000.00; and punitive damages in excess of \$75,000.00. (Compl. ¶¶33-36, and "Wherefore" Clause at 8).

THE PARTIES

4. The Plaintiff Darlene Gum resides in Ohio. (Compl. ¶1)

5. The Sam's Defendants are corporations organized and existing under the laws of the State of Delaware with principle places of business in Arkansas. The Sam's Defendants were not at the time of the commencement of this action, nor have they ever been, citizens of the State

of West Virginia. The Sam's Defendants conduct business in Vienna, Wood County, West Virginia, and neither their presidents nor chief officers reside in West Virginia.

6. Defendant Wal-Mart, Inc. is a corporation organized and existing under the laws of the State of Delaware with principle places of business in Arkansas. Defendant Wal-Mart, Inc. is not at the time of the commencement of this action, nor has it ever been, a citizen of the State of West Virginia. Defendant Wal-Mart Inc. conducts business in Vienna, Wood County, West Virginia, and neither its president nor chief officer reside in West Virginia.¹

BASIS OF REMOVAL

7. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332, and this civil action may be removed to this Court by the Defendants pursuant to the provisions of U.S.C. § 1441 because it is a civil action between citizens of different states wherein the amount in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs.

8. The Plaintiff, the Sam's Defendants and Wal-Mart, Inc., are citizens of different states.

9. As set forth above, the Plaintiff specifically plead an amount of damages in the Complaint in excess of the jurisdictional minimum and, therefore, this case may be removed because it is facially apparent from the Complaint that the Plaintiff seeks damages in excess of \$75,000.00.

10. As required by 28 U.S.C. §1446(b), this Notice of Removal is filed with this Court within thirty (30) days of receipt of the Complaint by the Defendants and, as such, this Notice of Removal has been timely filed.

¹ Although the Plaintiff has named a John Doe Defendant, pursuant to 28 U.S.C. § 1441(b)(1), "[i]n determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) . . . , the citizenship of defendants sued under fictitious names shall be disregarded."

11. As required by 28 U.S.C. §1446(d), a copy of this Notice of Removal is being served upon the Plaintiff, by and through her attorney of record, and upon the Clerk of the Circuit Court of Wood County, West Virginia.

12. Copies of all process, pleadings, and orders received by the Defendants in the Circuit Court of Wood County, West Virginia, Civil Action Number 18-C-343, are attached hereto and incorporated herein as Exhibit A.

13. Pursuant to Local Rule of Civil Procedure 3.4(b), a copy of the Circuit Court of Wood County, West Virginia, Civil Action No. 18-C-343 docket sheet is attached hereto as Exhibit B.

WHEREFORE, the Defendants, Sam's West, Inc., Sam's East, Inc., and Walmart, Inc., all of which are foreign corporations, respectfully request that this Court assume full jurisdiction over the cause herein as provided by the law, and that the Circuit Court of Wood County, West Virginia, proceed no further in the proceedings. The Defendants further demand that the trial of this matter in federal court be heard by a jury.

SAM'S WEST, INC.; SAM'S EAST, INC.;
SAM'S CLUB and WALMART, INC.;
By Counsel

/s/ Heather M. Noel

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CERTIFICATE OF SERVICE

I, Heather M. Noel, do hereby certify that on the January 25, 2019, a true copy of the foregoing **NOTICE OF REMOVAL** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Mathew C. Carlisle, Esq.
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424 Marietta, OH 45750
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Sanford A. Meizlish, Esq.
Jason C. Cox, Esq.
Barkan Meizlish DeRose Wentz McInerney Peifer, LLP
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Of Counsel for Plaintiff

/s/ Heather M. Noel

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